her, in the Surrogate's Court, Rensselaer County, N. Y. (57 Misc. 527), it was held that "payments made upon a firm note after the death of one of the partners by the assignee for the benefit of creditors of the surviving partner will not operate to prevent the running of the Statute of Limitations in favor of the estate of the deceased partner" (syllabus).

Principal and Agent—Sale by Principal—Agent's Right to Commission.—In Aluminum Products Co. *v.* Anderson, 164 N. W. 663, in the Supreme Court of Minnesota, it appeared, according to the syllabus by the court, that "plaintiff, an Illinois corporation, appointed defendant exclusive representative for the sale of its products in the States of Minnesota and Iowa, agreeing to pay a stated commission on accepted orders. Defendant had attempted, without success, to obtain an order from a certain Minneapolis dealer; thereafter, while in Chicago, a representative of said dealer gave an order for plaintiff's products to an agent of plaintiff whom he met there, which order was filled by plaintiff and shipped to the dealer at Minneapolis." It was held that defendant was not entitled to a commission on this order. On this point the court said:

"There is nothing controlling in the Minnesota cases. It is well settled in this state, though the authorities elsewhere are not wholly in accord (see Bluthenthal & Co. *v.* Bridges, 91 Ark. 212, 120 S. W. 974, 24 L. R. A., N. S., 279), that a broker who is given the exclusive right to sell a particular piece of real estate or to procure a loan is not entitled to a commission when the principal himself makes a sale or procures the loan unless the agent was the procuring cause. This is true although the broker in fact finds a purchaser or lender after the principal does, but before the broker has notice of this (Dole *v.* Sherwood, 41 Minn. 535, 43 N. W. 569, 5 L. R. A. 720, 16 Am. St. Rep. 731; 3 Notes to Minn. Cases, 171; Baars *v.* Hyland, 65 Minn. 150, 67 N. W. 1148; Mott *v.* Ferguson, 92 Minn. 201, 99 N. W. 804). The principal cannot employ another agent to sell the property or procure the loan, but he is not prevented from doing so himself merely because he has given the broker an exclusive agency. Doubtless the same rule applies to an exclusive agency to sell a particular article of personal property, and probably to a case like that at bar, where the exclusive agency is to sell goods of the principal within a certain territory. Plainly the principal cannot employ other agents to sell in the same territory without being liable to the first agent, but a sale by himself would not entitle the agent to a commission unless the latter had done something towards the sale. In Turnbull *v.* Northwestern Terra Cotta Co. (46 Minn. 513, 49 N. W. 229) it seems to have been conceded, or at least assumed, that an exclusive agency to plaintiff to sell defendant's wares at a specified

commission within certain territory would entitle plaintiff to the commission on sales made within the territory by defendant himself. That was not decided, however, the only question on the appeal being as to whether the evidence sustained the finding of the jury that the agency was exclusive. The other Minnesota cases cited (Norris *v.* Clark, 33 Minn. 476, 24 N. W. 128, and Sutton *v.* Baker, 91 Minn. 12, 97 N. W. 420) have no bearing on the question.

"The authorities from other states are apparently, if not in fact, conflicting. The trial court relied on Haynes Auto Co. *v.* Woodill Auto Co. (163 Cal. 102, 124 Pac. 717, 40 L. R. A., N. S., 971). In that case the contract gave defendant the exclusive sale of Haynes cars in Los Angeles and Southern California. A resident of Los Angeles, while in Chicago, ordered a car from plaintiff at its factory in Indiana. The car was paid for there and shipped to the purchaser at Los Angeles. The court held that defendant was not entitled to a commission on this sale. The only possible distinction between this case and the one at bar is found in the language: 'In view of our giving you the exclusive control of our goods in the above-mentioned territory,' in the contract before us. The most that can be claimed for this language is that it throws light on what was meant by 'exclusive representative for the sale of our goods.' We are unable to see that the latter expression clarifies the former; much less that it changes its meaning. The situation was simply that defendant was given the exclusive agency to sell plaintiff's wares in a certain territory. The Haynes case is really on all fours with this. Among the cases cited by the court for its decision in that case is Golden Gate Packing Co. *v.* Farmers' Union (55 Cal. 606), a case much like the one at bar in its facts. This case was cited by Justice Mitchell, in Dole *v.* Sherwood, to the proposition that an exclusive agency merely prohibits the placing of the property for sale in the hands of any other agent, but not the sale of the property by the owner himself. Other decisions are cited in the note in L. R. A. which lend support to the Haynes decision. The cases looking the other way must be considered in the light of the settled doctrine of this court, established by Dole *v.* Sherwood (supra), and succeeding cases, as well as the light of the particular facts in each case. The contract involved in Garfield *v.* Peerless Motor Co. (189 Mass. 395, 75 N. E. 695) was interpreted in the light of evidence as to trade usage. In spite of some claim to the contrary, we find no such evidence in the present case. In Marshall *v.* Canadian Cordage & Mfg. Co. (160 Ill. App. 115), Illsley *v.* Peerless Motor Co. (177 Ill. App. 459) and Taylor *v.* Bannerman (120 Wis. 189, 97 N. W. 918), as well as in Garfield *v.* Peerless Motor Co., there were peculiar provisions in the contracts which convinced the courts that it was intended that the agent should have a commission on each sale to a resident of his territory, no matter by whom or where made (see 2

C. J. 777, for a discussion of the question and a full list of authorities).

"It is needless to further discuss authorities. It is the view of a majority of the court that the trial court correctly ruled out the claim of a commission on the Hartman sale. That sale was made outside of defendant's territory. There was no intention whatever to prevent his making a sale to this customer. He had tried and failed. He had done nothing to earn the commission, and there is no evidence that he ever would have earned it. It can make no difference that the order was secured by another agent of plaintiff, so long as there was no attempt to invade defendant's territory."

Insurance—Excusable Homicide as within Accident Policy.—In Clay *v.* State Ins. Co., 94 S. E. 289, in the Supreme Court of North Carolina, it was laid down that under a policy insuring against death sustained through external, violent and accidental means, without any specific or definite exception covering the matter, the intentional killing of insured by a third person does not of itself withdraw the claim from the protection of the policy, and the test of liability is whether insured, being in the wrong, was the aggressor under circumstances rendering a homicide likely as the result of his own misconduct.

It was held that where insured wrongfully assaulted S. with a pole three or four feet long, and pursued the fight with a pistol which he first fired, and was then himself shot and killed, the homicide was not accidental within a policy insuring against death by external, violent and accidental means.